

1995 Cal. Sec. LEXIS 2

California Department of Corporations

September 11, 1995

File No: OP 6478CFL

Reporter

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COMMISSIONER'S OPINION

Core Terms

finance, lender, factual situation, interest-free, license, public benefit corporation, course of study, per annum, not-for-profit, broker

Opinion

[*1] THIS SPECIFIC RULING IS ISSUED BY THE COMMISSIONER CORPORATIONS PURSUANT TO SECTION 22754 OF THE CALIFORNIA FINANCE LENDERS LAW. IT IS APPLICABLE ONLY TO THE SPECIFIC FACTUAL SITUATION IDENTIFIED IN THE REQUEST FOR RULING, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER FACTUAL SITUATION.

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The request for a specific ruling contained in your letters of February 3, 1995, July 13, 1995 and August 24, 1995 have been considered by the Commissioner of Corporations. Your letter raises the question whether the Kaiser Foundation Health Plan, Inc., a California not-for-profit public benefit corporation, Kaiser Foundations Hospitals, a California not-for-profit public benefit corporation, and The Permanente Medical Group, a professional corporation, commonly known as the Kaiser Permanente Medical Care Program ("KPMCP") will be engaging "in the business of a finance lender" within the meaning of Financial Code Section 22100 of the California Finance Lenders Law ("CFL"), operative July 1, 1995.

You represent that KPMCP is in the business of providing health [*2] care services, and that the Department of Corporations has issued a license under the Knox-Keene Health Care Service Plan Act of 1975. Furthermore, your letters of July 13, 1995 and August 24, 1995, state that KPMCP proposes to make interest-free loans to current employees, prospective employees and students who indicate an interest in enrolling in qualified, accredited educational programs. Upon successful completion of the course of study, and only after making a commitment to be employed by KPMCP after the training, KPMCP will effectively forgive the loans by recharacterizing the loan as a "grant".

You also state that the number of loans will be dependent upon the projected shortages of professionals in specified health care fields. In some years, KPMCP may make up to one hundred loans, while in other years, no loans may be made.

Section 22100 of the CFL provides that "no person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner." The CFL does not define what is meant by the term "engage

in the business" nor are there any cases which interpret the phrase "engage in the business of a finance lender or broker".

However, [*3] in a broad sense, business means an occupation or trade engaged in for the purpose of obtaining a livelihood or profit or gain. *Mansfield v. Hyde*, 112 Cal. App. 2d 133, 137 (1952). "Engaged in business" generally implies a "...business activity of a frequent or continuous nature," (*Advance Transformer Co. v. Superior Court*, 44 Cal. App. 3d 127, 134 (1974)), contrasted with a single or occasional disconnected act. (Id.) Indeed, in an informal letter issued by the Department of Corporations in 1987 (OP 5491), a medical society scholarship fund which made interest-free loans was determined to be not "engaged in the business of a consumer finance lender."

Earlier, you represented that KPMCP intended to charge a low interest rate of less than 5% per annum on the loans. You also represented that as many as one hundred loans might be made. Furthermore, you stated that the loan amounts would be between \$ 2,500 to \$ 10,000 per course of study. Assuming that KPMCP makes loans at 5% per annum, it cannot be said unequivocally that KPMCP is not making a profit. Indeed, KPMCP would be obtaining a profit or gain under the cases [*4] cited, above, notwithstanding any other benefit to KPMCP from this program.

However, in your letter of July 13, 1995, you now represent that KPMCP would not charge or receive any interest on the loans, nor would KPMCP impose any costs or fees in connection with making a loan or collecting the amounts loaned. If KPMCP makes interest-free loans only, no profit or gain from the activity will occur. Therefore, assuming that KPMCP does not otherwise profit or gain from the activity, it is our opinion that KPMCP is not "engaged in the business of a finance lender" within the meaning of Section 22100 of the CFL and is not subject to the licensing requirement of that section as a result.

This specific ruling is issued by the Commissioner of Corporations pursuant to Financial Code Section 22754. It is applicable only to the specific factual situation identified in the request for ruling, and may not be relied upon in connection with any other factual situation.

This opinion is a specific ruling within the meaning of Section 22754 of the Financial Code.

/s/ By order of
GARY S. MENDOZA
Commissioner of Corporations [*5]

WILLIAM KENEFICK
Assistant Commissioner